

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
BARRY ULTICAN dba HIGHWAY )  
TRAILER SUPPLY, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB NO. 79-13

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violations of Sections 8.05(1) and 8.02(3) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding) at a formal hearing on April 10, 1979 in Tacoma, Washington.

Appellant appeared pro se; respondent was represented by its attorney, Keith D. McGoffin.

Respondent's Motion to Dismiss appellant's appeal on the ground

DA/LB

1 that appellant failed to timely file his appeal was heard and taken  
2 under advisement.

3 Having heard the testimony, having examined the exhibits,  
4 and having considered the contentions of the parties, the Board  
5 makes these

#### 6 FINDINGS OF FACT

##### 7 I

8 Appellant is the owner of a fire-damaged structure located  
9 on or near his place of business, 2342 Anderson Hill Road S.W.,  
10 Port Orchard, Washington. Because appellant believed it to be a  
11 hazard to the neighborhood children who could play in the structure,  
12 appellant sought to have the building removed. The cost to haul  
13 away the building was too much for appellant and he decided to  
14 burn the remains. Before the day of the fire, the local fire  
15 department told appellant that any untreated wood could be burned  
16 if the fire was tended and was of a certain size.

##### 17 II

18 On the day that appellant ignited the building, December 12,  
19 1978, he called the fire department and notified it of his intention  
20 to burn the damaged structure. Thereafter, one wall was ignited.  
21 The fire department then called back and referred appellant to  
22 respondent. Appellant then called respondent requesting permission  
23 to burn the structure. Respondent sent the pertinent application  
24 to appellant and cautioned him regarding burning of prohibited  
25 materials. Appellant instructed his employee to contain the fire  
26 which consumed about ten feet of one wall of the structure. Appellant

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1 did not have approval from respondent for the above described fire.

2 III

3 On December 12, 1978 at about 11:55 a.m., as a result of  
4 a report of a large smoke plume, respondent's inspector arrived at  
5 the site of the burning structure. The inspector observed composition  
6 siding and asphalt shingles in the fire from which a heavy plume  
7 was being emitted. A part of the heavy plume resulted from water  
8 being applied to the fire in an effort by appellant to control and/or  
9 extinguish it.

10 IV

11 For the foregoing event, appellant was issued a notice of  
12 violation for violating Section 8.02(3) and a second notice of  
13 violation for violating Section 8.05(1) of Regulation I.  
14 A \$250 civil penalty was assessed for the violations, which notice  
15 was received by appellant on December 30, 1978. Appellant filed  
16 an appeal with this Board and respondent on February 5, 1979. The  
17 date of filing with this Board is more than 30 days from the date  
18 that appellant received the Notice of Civil Penalty.

19 V

20 Section 8.02(3) makes unlawful any outdoor fire containing  
21 asphalt, petroleum products, paints or any substance (except natural  
22 vegetation) which normally emits dense smoke.

23 Section 8.05(1) makes unlawful any outdoor fire other than  
24 land clearing or residential burning without prior approval by  
25 respondent.

26 Section 3.29 provides for a civil penalty of up to \$250 per

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1 day for each violation of Regulation I.

2 VI

3 Appellant violated Sections 8.02(3) and 8.05(1) as alleged  
4 by respondent for which a \$250 civil penalty was properly assessed.

5 VII

6 Any Finding of Fact which should be deemed a Conclusion of Law  
7 is hereby adopted as such.

8 From these Findings, the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 Appellant did not file his appeal with this Board within the  
12 30-day time period established pursuant to RCW 43.21B.120 and .230.  
13 Accordingly, the \$250 civil penalty has become final and this Board  
14 has no jurisdiction to affect it in any manner. Therefore, appellant's  
15 appeal should be dismissed.

16 II

17 Any Conclusion of Law which should be deemed a Finding of Fact  
18 is hereby adopted as such.

19 From these Conclusions the Board enters this


20 ORDER

21 The appeal is dismissed.

22 DATED this 20<sup>th</sup> day of April, 1979.

23 POLLUTION CONTROL HEARINGS BOARD

24   
25 DAVE J. MOONEY, Chairman

26   
27 CHRIS SMITH, Member

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DAVID AKANA, Member